

June 28, 2005

MEMORANDUM TO: Luis A. Reyes  
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - SECY-05-0048 - PETITION FOR  
RULEMAKING ON PROTECTION OF U.S. NUCLEAR POWER  
PLANTS AGAINST RADIOLOGICAL SABOTAGE (PRM-50-80)

The Commission has approved the staff's recommendation, subject to the comments and changes noted below, to (1) develop the technical basis for a rulemaking to require licensees to evaluate the effects of plant configuration changes on the safety/security interface, (2) deny the requested petition for rulemaking (PRM-50-80) regarding licensee analyses of aerial crashes, and (3) publish a *Federal Register* Notice describing the Commission's intention.

Changes to the *Federal Register* Notice

1. On page 1, Change the "ACTION" line of the FRN to "Petition for rulemaking: Partial grant."
2. Starting on page 8, restructure the "Reasons for NRC's Response" section of the FRN to lay out the analysis of the proposed actions in a concise, narrative form rather than segmenting the staff's reasoning by each Strategic Goal. The NRC Strategic Performance Goals are a useful tool for the staff to use in evaluating proposed actions, but they may not be conducive to producing a readable, plain language format for discussion of many important staff decisions. In a number of cases, including this one, it would be more effective for the staff to address how it considered the Strategic Goals in one, condensed paragraph. Frequently, the Agency makes decisions for a multitude of reasons above and beyond those articulated in the Strategic Plan. The staff's explanation of why we are taking a specific action should not be limited to an inflexible approach merely to justify the action based only on our Strategic Goals.
3. On page 9, delete the 1<sup>st</sup> full paragraph (In addition, the NRC ... Equipment)).
4. On page 11, paragraph 1., revise the 3<sup>rd</sup> sentence to read ' ... site-specific ~~studies~~ **inspections** of operating nuclear power plants are underway or being planned to **ensure appropriate mitigative strategies have been put into place and are effective.** In addition, **site-specific assessments of important aspects of nuclear power plants are also underway or planned to identify if there are any additional potential mitigation strategies**

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that licensees are expected to consider determine the need, if any, for additional mitigating capability on a site-specific basis.'

5. On page 12, paragraph 4., revise the 1<sup>st</sup> sentence to read '... potential consequences of an successful attack on a nuclear power plant. The enhanced security requirements are contained in in a manner that incorporates the full scope of the Interim Compensatory Measures required ....' Revise the 2<sup>nd</sup> sentence to read '... site-specific studies inspections of operating nuclear power plants are underway or being planned to ensure appropriate mitigative strategies have been put into place and are effective. In addition, site-specific assessments of important aspects of nuclear power plants are also underway or planned to identify if there are any additional potential mitigation strategies that licensees are expected to consider determine the need, if any, for additional mitigating capability on a site-specific basis.'
6. On page 12, rewrite the denial of the aerial hazard portion of the FRN to incorporate language from pages 2 and 3 of the letter to the petitioner, starting with the second full paragraph on page 2, to use as a basis for denying the petitioners' second proposed action. The language in the letter more accurately explains the extensive actions the NRC has already taken in response to the petitioners' concerns. The staff should add a sentence to the end of this section stating that because the adversary characteristics and security measures associated with the Design Basis Threat are safeguards information, the NRC is unable to communicate to the general public the results of our studies and evaluations of protection against aerial hazards.
7. On page 12, add a paragraph to the end of the FRN summarizing the path forward to resolving the first proposed action. Include the second sentence of the first full paragraph on page 2 of the letter referencing the NRC's interoffice Safety/Security Interface Advisory Panel.

#### Changes to the Letter to the Petitioner

8. On page 2, 2<sup>nd</sup> full paragraph, revise the last sentence to read '... to amend the regulations 40 CFR Part 73 to require nuclear power plant licensees to implement specific security enhancements and/or measures to mitigate the potential consequences of an successful attack on a nuclear power plant. The amended regulations will incorporate in a manner that incorporates the full scope of the revised supplemented DBT issued by Order ....'
9. On page 3, revise the 1<sup>st</sup> full paragraph to read '... site-specific studies inspections of operating nuclear power plants are underway or being planned to ensure appropriate mitigative strategies have been put into place and are effective. In addition, site-specific assessments of important aspects of nuclear power plants are also underway or planned to identify if there are any additional potential mitigation strategies that licensees are expected to consider determine the need, if any, for additional mitigating capability on a site-specific basis.'

As result of the rule, plant changes should neither result in the inability to meet the

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supplemented security requirements, including the supplemented design basis threat, nor significantly diminish the capability to mitigate the effects of other threats (i.e., large fires and explosions) using existing or readily available resources.

The staff should update the relevant guidance documents (including Regulatory Guide 1.174).

The staff should issue a generic communication to heighten licensee awareness of the potential for changes to the facility or the security plan to adversely affect plant safety or security. The generic communication describing the existing licensee responsibilities with regard to safety and security should be issued no later than December 30, 2005.

(EDO)

(SECY Suspense:

12/30/05)

To expedite issuing the proposed rule on the safety/security interface for plant changes, the staff should incorporate this rule revision into the ongoing security rulemaking due to the Commission in February 2006. The staff should determine, in conjunction with OGC, if conforming changes in other parts of the regulations are necessary in view of the new Part 73 rule provisions that would require consideration of safety/security interface impacts prior to making any permanent or temporary changes to plant configurations or facility conditions. The power reactor security requirements rulemaking (10 CFR 73.55), including the incorporation of the B.5.b orders should not be unduly delayed. The staff should send to the Commission, within 30 days of the date of this SRM, a new schedule for completion of the rulemaking.

(EDO)

(SECY Suspense:

7/28/05)

Additionally, the staff should provide the Commission a schedule for conducting security rulemakings (in the reactor, materials, and waste arenas) with proposed priorities and realistic resource estimates, including a breakdown of the resources needed for each of the identified rulemakings to (1) develop the technical bases for the rules and (2) formulate all other elements of complete rulemaking packages.

cc: Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
Commissioner Jaczko  
Commissioner Lyons  
DOC  
OGC  
CFO  
OCA  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR

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